

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Third Session
April 5, 2005**

The Committee on Government Affairs was called to order at 8:11 a.m., on Tuesday, April 5, 2005. Chairman David Parks presided in Room 3143 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4412 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. David Parks, Chairman
Ms. Peggy Pierce, Vice Chairwoman
Mr. Kelvin Atkinson
Mr. Chad Christensen
Mr. Jerry D. Claborn
Mr. Pete Goicoechea
Mr. Tom Grady
Mr. Joe Hardy
Mrs. Marilyn Kirkpatrick
Mr. Bob McCleary
Mr. Harvey J. Munford
Ms. Bonnie Parnell
Mr. Scott Sibley

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Richard Perkins, Assembly District No. 23, Clark County
Senator Steven A. Horsford, Senatorial District No. 4, Clark County
Assemblyman Joseph M. Hogan, Assembly District No. 10, Clark County
Assemblyman Harry Mortenson, Assembly District No. 42, Clark County

STAFF MEMBERS PRESENT:

Eileen O'Grady, Committee Counsel
Susan Scholley, Committee Policy Analyst
Kiz Malin, Committee Attaché

OTHERS PRESENT:

Gene A. Hill, Sheriff/Coroner, Humboldt County Sheriff's Office, Winnemucca, Nevada, and Chairman of the POST [Peace Officers' Standards and Training] Commission
Ron Pierini, Sheriff, Douglas County, Nevada; President, Nevada Sheriffs' and Chiefs' Association; member of the POST Commission
Richard P. Clark, Executive Director, State of Nevada POST [Peace Officers' Standards and Training] Commission, Carson City, Nevada
E. Louis Overstreet, Executive Director, Urban Chamber of Commerce, Las Vegas, Nevada
Ted Olivas, Director, Government and Community Affairs, Office of the City Manager, City of Las Vegas, and Member, Nevada Public Purchasing Study Commission
Dan Musgrove, Director of Intergovernmental Relations, Office of the County Manager, Clark County, Nevada
Christina Dugan, Director of Government Affairs, Las Vegas Chamber of Commerce, Las Vegas, Nevada
Santana Garcia, Legislative Advocate, City of Henderson, Nevada
Rose McKinney-James, Legislative Representative, Clark County School District, Clark County, Nevada
John Madole, Executive Director, Nevada Chapter, Associated General Contractors of America, Inc., Reno, Nevada
Richard Daly, Business Manager, Laborers international Union of North America Local No. 169, Northern Nevada
Paul McKenzie, Organizer and Legislative Advocate, Operating Engineers Local Union No. 3, District 11, AFL-CIO [American Federation of Labor-Congress of Industrial Organizations], Reno, Nevada
Michael Tanchek, State Labor Commissioner, Nevada Department of Business and Industry, Carson City, Nevada
Richard Houts, Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada, AFL-CIO [American Federation of Labor-Congress of Industrial Organizations, Sparks, Nevada
Sara F. Jones, State Librarian, Division Administrator, Department of Cultural Affairs, Nevada State Library and Archives
Ian Campbell, Government Documents Coordinator, Washoe County Library System, Reno, Nevada

Anne K. Loring, Legislative Advocate, representing Washoe County School District
Christine Timko, State Publications Librarian, Nevada State Library and Archives
Andrew A. List, Executive Director, Nevada League of Cities and Municipalities
John J. Slaughter, AICP, Management Services Director, Office of the County Manager, Washoe County, Nevada
Nicole Lamboley, Legislative Relations Manager, Office of the City Manager, City of Reno, Nevada
Nancy J. Howard, Legislative Advocate, representing Nevada League of Cities and Municipalities
Darin Kirby, Private Citizen, Las Vegas, Nevada
Kent Lauer, Executive Director, Nevada Press Association, Inc., Carson City, Nevada
Russell Rowe, Legislative Advocate, American Council of Engineering Companies of Nevada
Randy Potts, Chief Information Security Officer, State of Nevada Department of Information Technology

Chairman Parks:

[Meeting called to order and roll called. Hearing opened on A.B. 345.]

Assembly Bill 345: Makes various changes relating to Peace Officers' Standards and Training Commission. (BDR 23-1326)

Assemblyman Richard Perkins, Assembly District No. 23, Clark County, Nevada:

The Nevada Commission on Peace Officers Standards and Training (POST) is an organization that develops the professional training for the men and women in Nevada who strive to protect the public good. As Deputy Chief of Police in Henderson, I understand that it takes effective law enforcement training in order to adhere to Nevada's highest standards for public safety.

The Nevada Legislature created the POST Commission in 1965. Since then the commission has gone through a number of changes. These modifications are due to our fast growing state, which has evolved to include both urban and rural schools of thought and has been changing to fit the needs of Nevadans. Assembly Bill 345 as it is written, adds one member to the POST Commission, which will allow this body to operate in a more effective manner.

[Assemblyman Perkins, continued.] I will indicate to the Committee that I have also brought a proposed amendment to the bill [in written form this is [\(Exhibit B\)](#)]. [[Exhibit C](#) is a CD created by Frank Adams with the “handout information”—in its written form it is [Exhibit B](#).] When I was contacted several months ago to bring the bill forward, and convinced that the POST Commission needed to be expanded, there were a lot of dynamics throughout the state: interaction between rural members, urban members, Category I, Category II, and the various things that the POST Commission deals with. The bill came forward to add a member to the Commission, primarily for the Las Vegas Metropolitan Police Department.

In discussing this with many members of the Nevada Sheriffs’ and Chiefs’ Association, I have been convinced that it is better if we actually add two members: a member for the Las Vegas Metropolitan Police Department and a member to keep the balance between urban and rural. If we only added one member, that would have created an even number on the commission. When you get to the voting portion of it, the chair, whoever that might be, would have not been able to vote except in the case of a tie.

Much like we attempt to do in many of the commissions we create, keeping an odd number so that there is never a tie vote, we allow all those to participate in voting and deliberations. That is the amendment ([Exhibit B](#)) that I would propose to [A.B. 345](#) today. Adding two members to the POST Commission will allow this body to operate in a more effective manner.

The commission currently consists of seven members. [Assembly Bill 345](#), as amended, would include one member from Clark County and one more member from a county other than Clark and Washoe. Adding these members to the commission will include a rural position that had been previously given up in the first iteration of the bill. This significant change will provide a balance between the representatives of urban and rural state agencies. The bill will further ensure that the same standards for the training of peace officers in Nevada are carried out through all the police agencies in the state.

The expansion will not only allow the commission better representation of this diverse state, but will provide our officers with the tools they need to better protect the citizens of the state of Nevada.

Assemblyman Grady:

My son is presently going through POST school, but on the advice of counsel, this would not affect me any differently than it would anyone else. I will participate and vote.

Gene A. Hill, Sheriff/Coroner, Humboldt County Sheriff's Office, Winnemucca, Nevada, and Chairman of the POST Commission:

I am not sure that I can add more than what Speaker Perkins has already given you except that I would like to reiterate that by keeping the number of commission members odd, it does allow the chance of a tie in a vote to not happen. If it was an even number, chances are that the chairman would not be able to vote. The chairman would not be able to represent that segment of the law enforcement that they represent. That is why we are trying to keep it as an odd number.

In 1999, the commission gave up a rural position so the state could have a position on the commission because they represent a very large segment of peace officers within Nevada. By doing this, it would allow the other counties to have a representative back on the commission.

Assemblyman Claborn:

I am familiar with Category I and Category II, but what does Category III mean, and who would be a police officer in that category?

Gene Hill:

Category III is primarily detention officers. They are deputies and correction officers who would work in a prison or county jail. That is primarily their duty, to work in a correctional institution; therefore, they are not out on the road. The Category II officers are your bailiffs and brand inspectors; there is a whole list of them.

Assemblyman Claborn:

If they are confined to some area, then they would be Category III. If it was outside of their area or jurisdiction, it would become a Category II?

Gene Hill:

It depends on the duties that they would be assigned. If someone moved from a correctional position to a bailiff position—because any time district court is in session, I then am responsible for the security of that court in my county—that would require a change to Category II.

Assemblyman Claborn:

What would a constable come under?

Gene Hill:

A constable is Category II.

Assemblyman Goicoechea:

Can you give me the present makeup of the 7-member commission? Where they are from?

Gene Hill:

We have one from Clark County at large. It can be any agency within Clark County. We have the same with Washoe County—any agency within Washoe County. We have one member from the Department of Public Safety. We have, currently, two members from rural Nevada, who are Sheriff Pierini, who is sitting to my right, and me. We have a representative from Category III, who, at this point, is the Director of the Department of Corrections. The last one is a member from Category II, who is an investigator from the Attorney General's Office.

Assemblyman Goicoechea:

It is pretty broad-based?

Gene Hill:

That is what we are trying to do, to keep it throughout the entire state. That is our goal.

Ron Pierini, Sheriff, Douglas County, Nevada; President, Nevada Sheriffs' and Chiefs' Association; Member of the Nevada POST [Peace Officers' Standards and Training] Commission:

To reemphasize the importance of this, at our December meeting, the Nevada Sheriffs' and Chiefs' Association voted to have the Las Vegas Metropolitan Police Department included as a permanent position on there, because they are the largest law enforcement agency in the state of Nevada. We thought that it was extremely important to do that. Without any doubt, the members of our association endorse that. I would urge you to pass this bill.

Richard P. Clark, Executive Director, State of Nevada POST [Peace Officers' Standards and Training] Commission, Carson City, Nevada:

We are absolutely in support of the expansion of the commission, even though it does give us a couple of more bosses. There are some good reasons. The Sheriffs' and Chiefs' Association and the Las Vegas Metropolitan Police Department have a strong desire to have a permanent position on the commission. They are the largest law enforcement agency in the state. It is important for them to have influence and representation on the commission, because the commission is actually the regulatory agency that oversees professional standards for approximately 9,300 peace officers in the state, 130 criminal justice agencies, and 20 different law enforcement academies.

[Richard Clark, continued.] The expansion is also important because, in 1999, the POST Committee moved out from under the Department of Motor Vehicles and Public Safety and became the POST Commission, a stand-alone regulatory agency under the Governor's Office. With that change, one position was included to be a state law enforcement representation position for the state, and the only way to make that change in 1999 was to actually give up one of the three rural positions that existed. This is now an attempt to replace that rural position, which lost representation in 1999.

Another point is that there have been times, with 7 people on the Commission, where we came very close to not having a quorum. To work for 3 months to prepare for a meeting and then not have a quorum and have to postpone the meeting, would be devastating. This would actually preclude that from taking place.

Chairman Parks:

I will now close the hearing on A.B. 345 and open the hearing on A.B. 251.

Assembly Bill 251: Authorizes preference for disadvantaged businesses under certain circumstances for certain contracts relating to public works and state and local government purchasing. (BDR 27-724)

E. Louis Overstreet, Executive Director, Urban Chamber of Commerce, Las Vegas, Nevada:

[Read from prepared testimony, [Exhibit D.](#)]

We would like to add our voices in support of the position as the Caucus of African-American Nevadans (CAAN) on A.B. 251. As a number of you are aware, nearly two dozen members of CAAN visited Carson City late last month to address a number of matters pending before the Legislature this session. Among the bills CAAN and the Urban Chamber are supporting this session is the matter presently before you.

We feel the bill, when enacted into law, will be capable of addressing some well-documented issues that have been a part of Nevada's past, and which should not be a part of our future. We make specific reference to the lack of equitable participation by females and minorities on state-funded capital construction. This highly noticeable lack of participation has been documented on three separate occasions during the past eleven years, in the

Regional Economic Disparity Study published by Clark County Government in 1994, *The Blue Ribbon Committee on Race Study* published by the Urban Chamber of Commerce in early 2002, and the report by the *Regional Business Development Advisory Council* that was forwarded to all members of the Nevada Legislature on January 15, 2005.

[Louis Overstreet, continued.] The 1994 study shows that, in 1992, the minority participation on public sector contracts in Clark County was 3.55 percent. A study forwarded to the Legislature early this year shows that, in 1994, the participation was 3.94 percent, or less than a 0.5 percent increase in 10 years. Whereas, a sample of four of the larger private sector entities showed a participation level of over 11 percent for minority businesses.

We are requesting that reference be made to the listed documents in any revisions made to A.B. 251. We feel that these three bodies of work provide ample justification for the need to pass A.B. 251. Further, as worded, it meets the conditions established by the U.S. Supreme Court in its *City of Richmond v. J. A. Croson Company* where it found that remedies for past discrimination must be narrowly tailored. In this regard, the Tenth Circuit Court of Appeals, in February 2003, upheld a preference program based on documents of past discrimination in the case of *Concrete Works of Colorado, Inc. v. City and County of Denver* (00-1145).

Thus, it is our hope that persons who may choose to oppose this bill have their facts straight and not drag out the old red herring that they are opposed to "quotas." In fact, the bill speaks to "disadvantaged business enterprises," which may include any ethnic group. This bill is not about quotas. It is about fairness and inclusion in a state where our major economic engine is highly sensitive to having a positive national and international image. We cannot afford being viewed as a state that is intolerant and exclusionary.

Senator Steven A. Horsford, Senatorial District No. 4, Clark County:

Louis Overstreet, on behalf of the Urban Chamber of Commerce, went through some of the reasons for the need for this bill. I wanted to put on the record that I appreciate this Committee looking into this issue and to identify some of the challenges that we continue to experience as it relates to full participation in public works projects. As we are developing goals to achieve full inclusion, this

bill is attempting to help in that effort. While this bill may not achieve all of the goals, and there are clearly some opponents to the bill, this is a very important issue for our state—for the people who are watching and monitoring how our public works projects are being developed and who gets to participate in those projects—and whether or not we are able to pass this measure, I urge all of those individuals who want to see improvement in this area to come forward and offer suggestions on how we could do that.

Assemblyman Claborn:

Could you tell me what this bill really does?

Senator Horsford:

The goal of the bill is to create a participation that mirrors the federal regulations at the state level for participation of disadvantaged businesses in cooperation with public works projects. That is the primary intent of the bill. It is mirrored after the federal regulations on public works projects. Based upon the amount of investment that our state is conducting, we think it is important to have these types of guidelines here in the state of Nevada.

Assemblyman Claborn:

I thought that we were doing this all along. As a business representative for 24 years of the Operating Engineers, we heard every one of those rules, and I thought that this was being done. Is there some disadvantage that I do not know about? I know that there are federal regulations as well.

Senator Horsford:

There are federal guidelines that our state is currently adhering to that are joint labor management partnerships throughout the state, particularly in the building trades. They are fully participating and doing a very good job in doing outreach and recruitment into the apprenticeship programs for employment. This bill specifically goes after the procurement of projects, the participation of vendors, and the procurement of those projects. That is where I think that we need to have more improvement, and there are additional federal guidelines that we are not participating in at the state level that would help us achieve this.

Assemblyman Hardy:

You are talking about mirroring the federal regulations. Has anyone put the state regulations on one side and the federal regulations on the other side, in a flowchart, so we can actually see that mirrored and note the regulations that we are missing? That way, I can get my arms around it. Has anyone done this?

Senator Horsford:

That might be a better question for Louis Overstreet. I have seen something to that effect, but I am not sure whether I have that in my file. If I do, I will provide it to the Committee.

Louis Overstreet:

The answer to the question is no. What we have done is look at the federal NDOT [Nevada Department of Transportation] requirements. They require the goals and participation that Senator Horsford was speaking of. There is about \$300 million worth of federal money coming into our state for about the next decade. We have been working very closely with NDOT to improve the situation, but presently NDOT does have a requirement for those in participation. We think they should mirror the federal goals for participation, and NDOT should fund the project. We also sponsor about \$290 million to \$300 million of state-funded capital construction in highways alone. That is the only instance that I am aware of where we have actually made the comparison. There need to be some comparisons statewide to answer your question.

Assemblyman Munford:

Is this bill very closely related to Assemblyman Hogan's bill, diversity in hiring practices? "Disadvantaged" primarily means that businesses have been overlooked and not given the opportunity. This is giving them a chance. It might be bordering on minorities to some degree.

Senator Horsford:

Assemblyman Hogan's bill deals primarily with diversity of employment practices as it relates to public works projects, as I understand it. We are very supportive of that measure as well. This Legislature had created a Disparity Committee that has met periodically over the last decade and the last report, which this Legislature received, showed significantly how there is underinvestment in minority and disadvantaged businesses in participation in public works projects. It also showed a disparity in private enterprise in the participation of minority and disadvantaged businesses in private contracts as well.

The goal of the bill, and what it attempts to address, is how we can start having a good, constructive discussion about how to bring everyone to the table to participate fully in the hundreds of millions of dollars that are allocated annually, as it relates to construction projects in this state. When you look at the investment, whether it is in transportation or in other construction-related projects, it is embarrassing as a state that we have not found a better way to get everyone included and involved. When we talk about economics, spreading

the wealth, and making sure that all communities get to participate, we have not done a good enough job. Assembly Bill 251 helps to address that.

Assemblyman Munford:

I agree with you wholeheartedly.

Ted Olivas, Director, Government and Community Affairs, City of Las Vegas and the Nevada Public Purchasing Study Commission:

I am here today to testify in opposition to this bill as written. As many of you know, this is a difficult bill for me to testify on because of the many years that I have been involved in this process and trying to make sure that our processes are open and inclusive to all the people that we represent. Obviously our organizations are proponents of open and inclusive government and outreach to the disadvantaged business enterprise community.

I would like to give you a brief history on this bill. Let me digress a little bit. We have a handout from the Nevada Public Purchasing Commission ([Exhibit E](#)). I will not follow along with that, but it does cover the points that I will be talking about. Assembly Bill 174 of the 72nd Legislative Session was presented to this Committee, and there was quite a bit of discussion on it. At that time, I was working with Clark County. Mr. Musgrove testified on that bill, and it was decided to do a resolution to urge the local governments in southern Nevada to come together and start talking about some of these issues, specifically bringing private and public organizations together to identify any problems.

This resolution was passed by the Assembly. It did not make it through the Senate, but it was passed as a part of A.B. 7 of the 20th Special Session. That bill did two things: it created the Nevada Commission on Minority Affairs, and it also created the Regional Business Development Advisory Council for Clark County. In Sections 11 through 20 of that bill, it identifies who needs to be involved and what things they need to look at. It is very specific. That group has been meeting, and they have been making a lot of headway.

There are currently 22 local governments included in the membership of that organization, along with 9 local business groups and 5 community businesses, such as the MGM, the Mirage, and others. It is a group of 36 organizations that are all sitting down to talk about the issues related to disadvantaged business enterprises. I think that they have done a very good job. They have met quarterly. As a matter of fact, Mr. Overstreet is the chair of that committee, and they have done some outstanding work.

They submitted a report, as Mr. Overstreet mentioned, which was required in the legislation. That report was submitted, and it had two bits of information:

one was the purchasing information, how much was spent by the various groups, and the second was the employment data by the various groups. What this report shows is that people are now willing to sit at the table and have some real discussions on the issues. The report is available. I do not know if it was distributed to everyone, but I can certainly get copies of that report if anyone is interested.

[Ted Olivas, continued.] This bill affects NRS [*Nevada Revised Statutes*] 332, which is local government purchasing. That is the law that relates to goods and services for local governments. It affects NRS 333, which is state purchasing. It affects NRS 338, which is public works purchasing. It relates to NRS 408, which is NDOT and the process that they use, and it also includes NRS 625, which is Engineers and Architects and those processes. I only talk about the effects of this bill on NRS 332 to keep my comments brief. Keep in mind that what I am talking about in NRS 332 mirrors itself in the other sections of the law in this bill.

On page 2, Section 2, paragraph (1), the governing body is required to determine, for each disadvantaged business enterprise applicant, that their access to opportunities with local governments has been impaired by previous discrimination. You have to look at each applicant and make that determination. On page 2, Section 2, subsection 3, if a governing body conducts a disparity study that shows that there has been a significant statistical disparity, or that the business has been previously discriminated against, the governing body may give preference to a vendor who indicates in his bid that he will enter into subcontracts with these disadvantaged business enterprises in that jurisdiction, for a specified percentage of his bid. If the vendor's bid is not more than 5 percent higher than the lowest bid, the higher bid, using the disadvantaged business enterprise, would get the award because of the preference.

This raises some interesting questions, of course. What if the jurisdiction does not conduct a disparity study? The only known study that was done, to my knowledge, was the 1994 Economic Disparity Study, which is now 11 years old. I am not sure exactly where we stand today with that. The other concern is how to define the significant statistical disparity. What is significant? I am not sure that we have the answer to that. How would you determine that a given disadvantaged business enterprise was previously discriminated against? You would have to take each applicant and make that determination.

We can only count the disadvantaged businesses that are within our jurisdictional boundaries. The question is, would you have to take, for instance, the City of Las Vegas and then say what disadvantaged businesses are within our jurisdiction, and then we can only count those in this regard? Of course,

that would help the county a lot, because they have a lot bigger area than the City of Las Vegas does. On page 3, Section 3, subsection 2, the local government would be required to determine that, for each contract, a certain percentage needs to be subcontracted with a disadvantaged business enterprise to offset the effects of previous discrimination.

[Ted Olivas, continued.] I am not sure how we can make that determination. We would have to look at the contract. Let's say that we are buying office supplies and we think that there has been 5 percent discrimination on this, so we are shooting for 5 percent inclusion with disadvantaged business enterprises. I am not sure how we would do that. On page 3, Section 4, a vendor who is given preference and awarded a contract pursuant to this bill can then ask for a waiver or a reduction of the subcontracting requirement. Someone can come in, get the preference, and then come to the local government jurisdiction and say, "Sorry, I couldn't make the percentage," for whatever reason. There is a process that is defined in there that we would have to go through to determine if they made a good-faith effort.

On page 4, Section 7, the bill defines the disadvantaged business and the disadvantaged person. The definition of a disadvantaged person conflicts with the definition in A.B. 7 of the 20th Special Session, which included physically disabled individuals. We have a bit of a difference in the definition.

There has been some discussion about how the local governments are lagging behind. I would submit to this Committee that there have been many efforts by the local governments to make a difference in this area, but you have to keep in mind that our processes are different than those of private industry. If the MGM and Mirage want to give a construction contract to a disadvantaged enterprise, they can do that. We have to go through the laws that are established by this Legislature in our contracting efforts. Therefore, we have to award to the lowest responsive and responsible bidder. As Mr. Overstreet mentioned, a lot of those numbers are driven by awards to the lowest responsive and responsible bidder. We cannot have any effect on who gets the award. We would like a disadvantaged business enterprise to get those awards, but it is an open and competitive process.

In conclusion, while the bill is well-intentioned, there appear to be some very serious concerns in its intended implementation. I might suggest that we allow the Regional Business Development Advisory Council that was established last session to continue in their efforts. I think that they have made a lot of headway. As I understand it, they are going to be talking about where we can go from here, so to speak, to determine if potentially there is some legislation that is necessary to assist the disadvantage business enterprises.

Assemblyman Sibley:

Could this cost the taxpayers more money in awarding the bids by trying to find vendors that qualify under these regulations?

Ted Olivas:

I think the cost would be 5 percent more on a given contract, and there is also, of course, the effort that is required to put the program together, to make the determination whether a business really is a disadvantaged business enterprise. There is some cost associated with putting the process together at the local government jurisdictional level, as well as, potentially, some additional costs for the award of the contract.

Assemblyman Sibley:

You talked about the study that was done; we don't have a copy of it. What did they conclude in that study? Do we have a big problem here that is not being addressed? One of the other concerns I have is that, from what I understand, even NDOT puts out requests for bids for projects, and they are getting no bids on certain projects. If we can't get people to bid on our contracts already, I do not see how this is going to help us get more people to bid. Maybe someone here from the State can answer that. But, as far as that study went, I was curious if we had an issue.

Ted Olivas:

That is kind of a tough question. I have not reviewed the Economic Disparity Study in some years, but as I recall, while there was no finding of direct discrimination against any businesses, they did find that there was passive discrimination against the local business community. As far as the NDOT [Nevada Department of Transportation] projects and the number of bidders, we are seeing fewer and fewer bidders—potentially that could be because of the marketplace and there is a lot of work. That being said, our goal is to try to reduce the barriers and make it easier for people to submit bids, because I think that we are all seeing fewer bids on our projects in general, not just public works.

Assemblyman Sibley:

What does passive discrimination mean? When was this study actually conducted?

Ted Olivas:

I believe that it was done in 1994. I do not know the actual definition of passive discrimination. I think that the intent was to say that, while they did not pick business A over business B because this person is a Hispanic American, they have done business with certain businesses for a long time and are not

consciously thinking about other opportunities and other businesses that might be out there. So, while it was not directly discriminating against a company, because we did not try to spread the wealth and think about the other entities that were out there, it was done passively.

Dan Musgrove, Intergovernmental Relations Director, representing Clark County, Nevada:

I would like to piggyback on some of the questions that Mr. Sibley asked, as well as some of the last comments that Mr. Olivas made. He ended off talking about the fact that public works projects and public works agencies, especially local governments, are bound by the competitive bidding—the lowest, most responsive bidder. That is why we were so encouraged by the headway that we made as a result of A.B. 7 of the 20th Special Session and the testimony and the negotiations that we had based on A.B. 174 of the 72nd Legislative Session in setting up the Regional Business Advisory Committee (RDAC) for Clark County.

What we believe that Committee is doing is helping and teaching those businesses that normally did not feel that they could compete on a level playing field, because of their perceived lack of knowledge of the process and of their lack of sophistication in comparison to some of the older, established businesses. That is what Clark County has been doing for a number of years. In the last year, by bringing together all of those groups as a part of the Regional Development Committee, those 35 entities talked about and were given the opportunity to learn the processes that are necessary to allow them to compete on a level playing field—maybe even becoming the most responsive bidder to our public works projects.

I have handed out a three-page document ([Exhibit F](#)), and I hope it got around to you. It talks about initiatives already under way in terms of small business developments in Clark County. Mr. Olivas, in his prior position with Clark County, was probably one of the leaders of putting this together at the behest of our Clark County Commission, because we were somewhat the leader in doing these disadvantaged business seminars and committees. If you look through the list, it is pretty extensive. I just want to call attention to a few of them.

On Number 14, we review projects on a project-by-project basis to determine the bond and insurance levels on smaller, first-time projects. We remove any barriers or unnecessarily restrictive bid specifications that may impede small business contracting ability. Our Clark County Manager will sign off and monitor those professional and sole source awards to encourage department heads to diversify their vendor outreach. We inform those small businesses of bid

opportunities by ensuring that they are on all the notification lists. That was of key importance—making sure that they even know that these awards are available so that they can get out and compete.

[Dan Musgrove, continued.] We streamlined these payment procedures to assist in expediting pay requests so that the small business vendors work with our comptrollers so they have an ability to compete. We prepare a resource directory to disseminate to small vendors for referral to other agencies. We send out letters to subcontractors so that they are included on the winning bids for prime contractors. This is what we try to bring forward to the RDAC so that we can teach those other vendors—those other public work agencies—what we were already doing, so that they can become more inclusive.

We are so excited about having this regional board that has just met for over a year. Mr. Overstreet testified to the fact that, while he has not seen much improvement over the 10 years, we now have a baseline to go forward and begin monitoring how well we are doing. I think the current bill before you today goes too far. I think that the moves we made last session, during the special session, need to be given an opportunity to go forward. We have really just had a year to sit down and try to be more inclusive. I don't think that you are going to start seeing the results yet, because those folks have not had a chance to start bidding on projects yet. They are just learning the processes that they did not understand before.

We would ask that we have an opportunity to continue the work that we have already done so that we can decide whether or not we are truly being non-inclusive in our bidding processes. Mr. Olivas is the technical expert on going through the bill project line-by-line. I can answer Mr. Sibley's question. The airport does a lot of federal contracts and uses federal money for which we have had to follow the federal guidelines for a long time on a typical public works project. Terminal number 3 at the airport is probably going to be a \$700 million project. That 5 percent preference could cost taxpayers \$35 million.

In a project of that magnitude, you are talking about some significant dollars. Right now, in NRS 338, we already have preference for those that have been paying taxes, so you add this additional 5 percent for a disadvantage business and it can be significant to taxpayers. I leave that to you.

Assemblyman Hardy:

I need to understand the 5 percent issue. Are we talking about 5 percent over and above the contract that would be in this bill? You bid a contract and go 5 percent above that?

Ted Olivas:

What it means is that if Mr. Musgrove and I are bidding on a given contract and the local government says that it thinks the discrimination for this contract is 2 percent, Mr. Musgrove submits a bid, and I submit a bid, but I include a subcontract with a disadvantaged business enterprise for 2 percent of the work, I have met the requirement. If my bid is not higher than his by 5 percent, I get the award. It could range from 1 to 5 percent, as long as I do not exceed that 5 percent window. The local government determines what percentage needs to be subcontracted on the contract, and if I, as a bidder, meet that requirement and my bid is not 5 percent higher than the low bid, I get the award.

Assemblyman Hardy:

Have the entities been accused, or convicted of, any active or passive discrimination in the last 2 years since we did this board? Do we have examples of such, in the time previous? Could we say that we do need to do something right now?

Ted Olivas:

Not to my knowledge. There has been no indication. Mr. Overstreet might say something differently, but from my perspective, I do not believe so.

Dan Musgrove:

One of the things that was hard to quantify is the fact that, because we are so restricted when awarding contracts to the lowest, most responsive bidder, the key was helping those individuals become more responsive bidders. That is what the RDAC does. It helps broaden their abilities to compete on a level playing field so that there is not any need to give any special exception. We are so cognizant of public dollars and trying to get that most responsive bid at the lowest cost, we wanted to try to provide a venue so that they could then learn not only how to bid, but how to compete.

I do not know of any instance in the last 2 years, but, because this process is just evolving, there may not be contracts that they have begun to bid for. You cannot necessarily tell whether a company has been actually discriminated against. Have they met the qualifications of the bid, or have they not? Our object is to get them so that they can qualify for that bid.

Assemblyman Hardy:

I look at the bill, and I am looking backwards to show that somebody experienced previous discrimination. On line 21, Section 3, page 2, I do not see a timeframe on that. I wonder how far back we are going to look at that very issue. I do see that as a problem. I would be curious if we have documentation or justification that we need to consider in that—whether it is a timeframe, or

the severity for documentation. I am open to Mr. Overstreet or to anyone else who would like to answer that question.

Ted Olivas:

That is our concern. We do not know how to define that previous discrimination. Is it one year? Is it five years? Is it significant? How do you make those determinations? That is what we are struggling with as well.

Louis Overstreet:

I am in an awkward position because both Ted [Olivas] and Dan [Musgrove] are good friends of mine, and we have had a healthy discussion on the issue. I would say that, for the record, they have been very supportive of bringing about the needed changes. I have a little give and take on some of the things that they discussed, but we can certainly work with them. I would ask Mr. Olivas to provide you with the Regional Economic Disparity Study that was done from 1988 to 1992, a four-year study.

On page ES17 of that study, they draw a different conclusion from Mr. Olivas relative to what constitutes discrimination in our county. For the record, I do want to say that those two gentlemen have been very supportive and have worked very diligently to bring about the change. Although I differ with them on some of their approaches and some of the conclusions they draw, I do not question their integrity in terms of the process.

Christina Dugan, Director of Government Affairs, Las Vegas Chamber of Commerce, Las Vegas, Nevada:

We have a letter that we would like to enter into the record ([Exhibit G](#)), but we also have a few comments that we would like to share with you as well. We are categorically opposed to discrimination in any form, whether with respect to government contracts or private contracts. We have been a part of the regional board since its beginning a year ago, and have tried very diligently to not only communicate with our membership about the need to increase minority participation in the business community, but also to work with the county and local governments to ensure that those contracts get out to the appropriate individuals in the bidding process.

Through that experience, I have served on their subcommittee for policy studies, which was headed by Paul Johnson from Caesar's. In that process, we have put out a number of surveys to find out what other people are doing in terms of the policies and procedures that they put forward to make sure that minority and disadvantaged businesses have the opportunity to participate in these contracts. Our objection to the bill primarily rests on the fact that we believe that all businesses should be treated equally and that no one should have any

advantage in the bidding process or be allowed to bid at a higher level. We also share some of the concerns that have been brought forward with respect to expenses. The letter flushes out a little more of our position on this bill:

[Christina Dugan, continued.] We strongly stand against any racial, ethnic, sex, and religious based discrimination and other forms of bias in the bidding process for any contract, not simply those issued by government. However, we have concerns with granting certain parties a preference over others in the government bidding process. Instead, the contract should be awarded to the lowest and most qualified possible bid, meeting the specifications of the application.

As a member of Clark County's Regional Business Development Advisory Council, the Chamber has been closely involved in working to eliminate any discrimination or unnecessary burdens faced by disadvantaged business owners. We have worked to make members aware of potential government contracts and sought to encourage access for disadvantaged and minority owned businesses, not only for public sector bidding projects, but private sector ones as well.

As you know, A.B. 251 would authorize preferences for disadvantaged businesses for certain contracts relating to public works and state and local government purchasing.

The Las Vegas Chamber of Commerce would like to express our concerns with A.B. 251. However, we assure the Committee that no matter what the outcome of this bill, we will continue to support free market opportunities for disadvantaged businesses. We thank you for your consideration.

Santana Garcia, Legislative Representative, City of Henderson, Nevada:

I just want to support the comments made by Ted Olivas. We are also in opposition to this bill, as written.

Rose McKinney-James, Legislative Representative, representing Clark County School District, Clark County, Nevada:

The school district must reluctantly enter its opposition to the bill, as written. This opposition is not focused on the apparent intent of the bill, which is to provide broader opportunities for the participation of women and disadvantaged businesses in the construction of public works. It is instead directed to the procedural and fiscal hurdles which serve as a potential barrier to the successful

implementation of the measure. The bill currently authorizes local government, and those who engage in the construction of public buildings, to comply with all of its provisions, and it provides a framework for the identification of disadvantaged businesses, which are seeking a designation which allows them to work with contractors who successfully compete for bids to engage in work for these public entities. Once designated, the disadvantaged entity may be eligible to subcontract with the successful bidder as long as its bid does not increase the cost by more than 5 percent. This was the concern that Assemblyman Hardy put forward.

[Rose McKinney-James, continued.] The logistical conclusion is that compliance in the measure could result in an increase of up to 5 percent on a variety of projects. This proposed procedure would result in a fundamental change in the manner by which public projects are both bid and awarded. The notion of providing special consideration to disadvantaged businesses is not new. There are a number of successful models in place, some used by the federal government and others used by private industry. However, the majority of these programs do not require the comprehensive research and the determination of historic discrimination, which was discussed by previous speakers, and the additional steps that are required to match the disadvantaged business enterprise with a contractor.

Respectfully, existing programs do not include the additional layers outlined in this bill, and may prove to be more effective when offered as examples of approaches that might be used in an effort to mitigate the cost and resource issues which we see embedded in this measure. While the bill does not contemplate a fiscal impact on the Clark County School District, we believe that there could be a significant cost to implement the measure. We have not attempted to quantify all of the costs, but acknowledge that the requirements set forth in this measure will necessitate the hiring of additional staff to conduct the research and to identify and designate qualified vendors and contractors. In addition to the annual reporting and recordkeeping outlined in the bill, it will create an additional workload.

Finally, we could see, at the very least, an average cost increase of 5 percent per project. It is also not clear how much of a contract must be performed by the minority subcontractor in order to obtain the preference. This could result in inconsistent application of the law amongst the various political subdivisions that apply the public works and public purchasing laws. In other words, Clark County, as an example, might not give a bidder's preference, but the Clark County School District might—resulting in inconsistency in the law. I think that it is important for us to note that we are happy to work with Mr. Overstreet and others. We are participating on a variety of levels in the

identification of opportunities to expand inclusion. We are not opposed to advancing diversity. We are not opposed to providing inclusion, but we believe that this measure is problematic and would appreciate your deference in understanding those implications.

John Madole, Executive Director, Nevada Chapter, Associated General Contractors of America, Inc., Reno, Nevada:

I would like to agree with many of the statements that have been made by Mr. Olivas and others. We are particularly concerned with the provisions of NRS 338 that would be affected. I would like to point out that we experience a lot of difficulty now when we add a lot of subjective criteria in the law. We want everyone to have equal opportunities, and we are opposed to discrimination. But some of the language in the bill—when you start talking about, “Have you attended meetings? Have you appropriately subdivided?”—is problematic. On page 17, it talks about “appropriate subdividing bids.” On page 18, it talks about whether or not you have contacted specified disadvantaged businesses. It goes on to talk about whether you have advertised.

I am just raising the issue that every time that we add one of these criterion when we are talking about competitively bidding jobs, we create an opportunity for a second bidder or a third bidder to protest the bid, claiming that this person should have advertised in one more magazine, or some other complaint. A lot of those things, ultimately might result in the job either being rebid or awarded at a higher price. We support the concept of doing what we can to make sure that everyone has equal opportunities. Assembly Bill 210, which was discussed earlier, takes a different approach. We suggested some amendments that would make that system workable, and we would like to see you take an approach like that. We are opposed to this bill, as it stands.

Ray Madole, Owner, Valley Hoe Construction, Reno, Nevada:

Going through this bill, I can see that this will indeed add costs to public works construction. I noticed, with Mr. Musgrove’s program, it is a proactive approach to level the playing field. I run a lean and mean operation. I can compete on a level playing field. I do not think that the 5 percent bid advantage is anything except an added burden to the public. Probably the most discriminatory agency in the state is indeed the people in this room, because of added regulation and the lack of response to public works construction from a small minority business and small businesses in general.

The fact is they do not run the operation or carry the overhead that enables them to deal with the added burden of the regulations. If you want to increase participation, reduce the regulation. This bill does not appear to me to make any

effort whatsoever towards reducing regulation. I am adamantly opposed to it, even though I would benefit from it.

Louis Overstreet:

Hopefully we can work together to make something that is positive. I want to also offer to work with the people who extended an opportunity to work with us and craft something that works for the entire state that is cost effective and inclusive.

Chairman Parks:

I will now close the hearing on A.B. 251 and open the hearing on A.B. 375.

Assembly Bill 375: Makes various changes to provisions relating to public works. (BDR 28-1118)

Assemblyman Joseph Hogan, Assembly District No. 10, Clark County:

I would like to take the opportunity to present A.B. 375 to your Committee. This bill will clarify several important terms and definitions which can cause disagreements on construction projects. Further, the bill addresses the role of the Labor Commissioner in resolving disputes regarding designation of workers by trade or specialty in determining an appropriate prevailing wage. It also addresses the issue of defining the site of a project.

The overall intent of this bill is to smooth out the process of resolving various technical disputes that can arise in connection with these projects and, maybe, achieve a higher level of harmony in this entire process.

Richard Daly, Business Manager, Laborers International Union of North America Local 169, Northern Nevada:

Unfortunately, there was a time crunch in bill drafting various things. I did not even get a chance to look at the bill before it came out. There are some amendments being given to you (Exhibit H), and they are actually quite substantial. I did work with bill drafting and counsel for this Committee, in making some of these changes. I will go through them quickly, because there are quite a few changes from the initial ideas that I gave to LCB [Legislative Counsel Bureau]. Hopefully, this will address the issues.

In Section 1, page 1, lines 3 through 7 are being deleted in the amendments. People already have an opportunity to make a complaint to the Labor Commissioner under other rules. We would add in a new subsection 1 and a new subsection 2, which essentially says that, it is the responsibility of the

contractor bidding on public works in the state of Nevada to determine what classification these workmen should be paid at. It suggests that the process be the same as that of an awarding body if they are investigating a complaint in order to get the most information before they make their decision.

[Richard Daly, continued.] Subsection 2 says that if a contractor claims to have a class of workmen that hasn't been surveyed, to use the same process and the closest classification for the type of work that they are performing. We renumbered subsection 2 in the original bill on line 1, page 2, to subsection 3, and made the changes. The information in black is the language that was in the bill draft. The blue is added language, and the red is deleted language. I tried to provide it all to you so you could read through it.

Essentially, it says that the Labor Commissioner, or another person under NRS 338.070—because public bodies or whoever has control over public works projects—has the responsibility to investigate. In working with bill drafting, we did not know what word to put in there, pending some other bills that are out there. We just wanted to know that other people, besides the Labor Commissioner, could do these investigations. Then we considered these following steps: (a) was already in the bill and we keep it; (b) we delete their version of it and add in a new version of (b) that says that they need to get as much information as they can about the prevailing practice, the history of the practice, what the wage rate is, and how the area practice affects what the wage rate is. They would then have the best information when they are going forward in their investigation. Steps (c) and (d) are the same as in the bill drafting version.

Then we delete lines 12 through 14. We reletter (f) to (e) and just add the requirement that someone else besides the Labor Commissioner may be making these reviews. In speaking with bill drafting, it was suggested that we add a new subsection 4, allowing the Labor Commissioner, or other person making this inquiry, to refer to the disputed procedure or to an alternative procedure if one exists under the collective bargaining agreement. We hope that this will settle some issues and take some work off of their table. If that alternative dispute is in place, we should try to utilize it. If an employee attempts to sue his employer for some other reason, the first thing that the court asks is whether he has exhausted the remedies under his collective bargaining agreement. We are already pressing people to go in that direction.

Subsection 5 refers to the requirement that before anyone makes this determination we want them to go to any of the unions which may have information concerning the prevailing area of practice and to consult any contractors or contractor representatives who may have information. There has

been a series of events that has brought us to this point, and the issue is getting resolved. This stems from the fact that the previous Labor Commissioner attempted to put into regulation definitions of what the various crafts do. That regulation was rejected. He lists those anyway on the wage determinations that he does.

[Richard Daly, continued.] Public bodies, when they are doing investigations rather than contacting the union involved, employers involved, or anybody else, go straight to the Labor Commissioner for an opinion of what works in utilizing that. In making those decisions, instead of reflecting on what the business environment is, what the work is, and what the prevailing wage rate is based on, they are interjecting this opinion and influencing the marketplace, and that is not the government's job. That is the real problem that we are trying to address here. Get as much information as you can, you still need a referee in some cases, they still get to make the call, but we want them to have as much information as they can, and we want to have access.

Subsection 6 says that if the person hearing the dispute believes that the employee was misclassified, he/she should reclassify that person. Subsection 7 says that they shall issue a written decision. If the decision is made by someone other than the Labor Commissioner, then you can request an appeals process. Any person can make the appeal to the Labor Commissioner within 10 days if they are aggrieved. Subsection 8 says that if you are a person entitled to be heard under NRS 338.075, which includes employers, public bodies, or recognized national labor unions, that the Labor Commissioner shall hold a hearing in which he will make the determination based on the evidence at the hearing and nothing else.

Subsection 9 says that the Labor Commissioner only has to have three hearings for all crafts in any one county per year. We recognize that there are a large number of disputes, and sometimes we want only the best ones to get to those situations. We do not try to "hear" the Labor Commissioner out of existence. The remedy there is the interference by the regulations and rules that are in place within the marketplace that we are trying to address. The second part of the bill is amended in Section 2 to recognize classes of workmen. You can see the changes that we made. Recognized classes of workmen shall be classes recognized in the construction industry as being distinct crafts for the purposes of this survey.

There is other language that is being deleted. We do not believe that we will end up needing it, as this is similar to another one that is out there. In any event, if this is the only bill that passes, this language is still relevant in the real world. There is one change in Section 3 that we do not need, so I proposed

deleting the entire section. I was going to delete the language that was in there so bill drafting recommended deleting the whole section.

[Richard Daly, continued.] Section 4 is the one that deals with the site of work. On page 7, line 22, we are amending the title of subsection 2 and subsection (a) to change the language. The new language states: "The performance of work in the execution of a contract for a public work at the physical place or places where the work is performed, or a significant portion of the public work is constructed, altered, repaired, assembled or installed." It seems pretty straightforward, but we have a lot of issues over that—what is and what is not the site of work.

We want to try to narrow it down to have less confusion, misunderstandings, disputes, and fewer hearings. The rest of that section we deleted, because we rephrase it in another way further down.

Then we move down to subsection (b) dealing with what a site of the work means: "The performance work for any subsequent assembly." We have a lot of issues now where people try to say I have a permanent yard, and I am going to try to do a substantial part of the public work at this permanent yard, to get out of paying the prevailing wage. I polled the Labor Commissioner—and other people that have to decide—who said, "I do not really know unless we have a hearing, unless we go through the investigation." All of these are cumbersome things. By the time we finally do decide, the work is over, and nobody ever makes them go retroactive.

Paragraph (c) is work performed at batch plants, barrow pits, gravel pits, and other similar operations. This is where the batch plant is dedicated to the public work. This is to cover work on NDOT projects mainly, or railroad projects out in the middle of the state, and they will have a dedicated pit to bring in a temporary gravel operation and make the material for the project. It is not used for any other purpose; it is dedicated, or nearly so, to that project. That is pretty much what is in place now. People understand that. What I needed to say was that the term does not include—where employers or various people that have gotten their hackles up—barrow pits, batch plants, and various things that are in business without regard to a particular public work; those that sell to the general public are not covered.

Paragraph 2: Work performed at an established manufacturing facility. People say, "How far can you go?" We do not believe that the manufacturing of nails to be used on a public works project should be covered as necessary to completion of the contract, or components used on a project. Those are some of the arguments that have been made. That's why I gave you that example.

We are trying to exclude manufacturing, but we have a conundrum where the manufacturer is also the contractor—what work is bona fide manufacturing and what work is, and should be, covered by prevailing wage. That is what that section attempts to cover.

[Richard Daly, continued.] Finally, subsection (e) was renumbered to say, “Necessary in the execution of the contract for the public work.” That language is straight out of the NAC [*Nevada Administrative Code*] that we kept from bill drafting. It was part of the suggestion.

Assemblyman Goicoechea:

Why would you limit the number of hearings to only three? Clearly, you could have in any given year more than three issues come up in one particular county. If you are going to limit it, what do you do with the ones that come after you have held your three hearings?

Richard Daly:

The only reason that I limited it there was that it is partially following what is in NRS 338.030 on the hearings if you dispute what the prevailing wage determination is on the survey process. That limits it to one hearing per county, per year, and there is a reason for that. There is history for that. One may not be enough in these circumstances so I wanted to limit it to three. If you want to remove that restriction, I would be happy to entertain it.

Assemblyman Goicoechea:

I agree, because you could have an issue come up in any particular county, and again, we are talking about counties, not contracts or jobs. If you had a contractor move in and had some problems, causing you to use the three hearings, and then you have five other contracts ongoing, where do you go?

Richard Daly:

It is permissive. I am assuming the Labor Commissioner could have more hearings. Hopefully, if there was a situation like that, the Labor Commissioner could lump several issues into one hearing. I was just trying to narrow what was in the law and anticipate a sticky point with some other individuals.

Assemblyman Hogan:

This was an attempt to try to put a little cap on the burden that might be imposed on the Labor Commissioner to hold large numbers of hearings. You will notice that the language says that the labor commissioner may not be required to hold more hearings. It does not preclude him if, in the judgment of the Labor Commissioner, a third, fourth, or fifth issue comes up that is significant enough to need a hearing. He is entirely free to conduct the hearing. It is really a bow to

the workload of the Labor Commissioner. If he does not hold a formal hearing, there are still other ways of addressing it, such as combining that issue with something else that will get a hearing. Basically, if it needs a hearing and the Labor Commissioner concurs, there could still be a hearing. It is not a limit; it only says that he may not be required to go beyond the three hearings.

Assemblyman Goicoechea:

While I agree with that, the only guy who has an out in this is the Labor Commissioner. I would prefer that this language was not in there. He has somewhere to hide. Realistically, if there is an issue, it needs to be resolved. We all have a job to do.

Assemblyman Grady:

I have two questions for you. When you refer in many places to NRS 338.070, the way I read it is that it is the public body that gets involved. Are you trying to replace the public body with the labor union? Is that the intent there?

Richard Daly:

No. I am not sure if public body completely works, or if we need to make a different amendment somewhere else. There are occasions, although this does not happen a lot, where a project is subject to NRS 338.010, through to NRS 338.090, by virtue of a redevelopment law NRS 279.500 or the issue of economic revenue bonds and various things, where another entity besides the public body has control over the project. It is where it is a public/private type of a scenario. The only thing that they have to follow is the prevailing wage laws, so during the surveys, we make sure they are there. They have some of those duties as the public body. Maybe we can find another way to fix it. I was just bringing up the fact that most of the time; the person who has the responsibility to do the frontline investigation is the awarding body, or the public body of the person who has control of the project. No, the unions would not be doing those investigations. When they do the investigations, if our rate prevails as the collective bargaining rate, all we are asking them to do is talk to the bargaining parties—both union and management—to determine what the practice is, and establish the rate. This way we can get the best result. We think that if this process is used properly, there will be fewer complainants, misclassifications, and hearings, because people will get the information and make the decision right the first time. That is the goal.

Assemblyman Grady:

The other thing that concerns me is the way this appears. I think the present Labor Commissioner and the former Labor Commissioner have worked very, very hard to bury some of the ills of the past between local governments and the unions. It appears to me that this is bringing back some of the problems that

were perceived in the past by almost putting in there that the labor unions could now come in and assist the Labor Commissioner, which, to me, could be a very strong intimation of what the Labor Commissioner's duties are. I am not sure what you are trying to fix here, but I am not sure that it is not a step backward.

Richard Daly:

We are trying to fix, but not trying to supercede anything else. There are disputes. The best example I can give is where there was a situation where a painting contractor on a public works project, who classified his people when they were doing anything other than painting—when they were cleaning the brushes, or doing whatever—as laborers. The painters and the contractors who are signatory to the painter's collective bargaining agreement that established the rate do not use laborers for that work. It is the work of the painter to mix the paint, use the tools, clean his own tools, mask the work off, and various things.

There was a complaint put in with the awarding body. They did their investigation and said, yes, they could classify those guys as laborers for that type of work. This contractor is not signatory to the collective bargaining agreement. The contractors that are signatory are not allowed to perform the work in that way. The wage rate was based off of that practice. The awarding body interjected their opinion on how the work should be done, and influenced the marketplace.

I was never contacted as a representative of the class of worker who claimed to be able to perform that work. If I had been, maybe we would have gotten a better result, and maybe we would not have the conflicts that we have. All I am asking them to do is to contact the people who have the information so we can get the best answer.

Assemblyman Grady:

I still believe that it is the job of the Labor Commissioner. Any one of those employees could have filed a complaint with or without your representation.

Chairman Parks:

Your proposed amendments, have you shared those with the Labor Commissioner?

Richard Daly:

Yes, this morning I gave them to him. I gave them to everybody I thought would be interested until I got down to 20 copies. I know that Danny Thompson and Jack Jeffrey are downstairs at another meeting and they both said they signed

in "in favor" of the bill. They are not able to testify, but they are in support of the bill.

Paul McKenzie, Organizer and Legislative Advocate, Operating Engineers Local Union No. 3, District 11, AFL-CIO [American Federation of Industry-Congress of Industrial Organizations]:

I am here today to testify in favor of this bill. The changes in the bill have been brought to our attention, and we feel that there is a need to change them in order to clean up some issues that have come about in the last few years that have broken historical trends in the way that prevailing wage laws are interpreted. There have been several rulings made, based on the vagueness of the current law, that have broken these historical trends. Richard Daly mentioned a few of them concerning the painters.

There have been some classification rulings: the labor union rates and classifications prevailed, as did the prevailing wage. In the past, the way that those classifications have applied to prevailing wage work has usually prevailed. An example of that is, we have a classification for an excavator that is up to 1 yard. The public body has determined that a small excavator, who excavates under 3/8 of a yard, does not fit into that classification. The contractors that are under union contracts bid that project knowing that if they have that piece of equipment on the job, they are going to have to pay the rate of the excavator up to a yard. A nonunion contractor, knowing the public body is going to let him pay less than that, will bid the job at a lower rate. This causes an unevenness of the playing field, which the prevailing wage laws were designed to establish.

We are supposed to establish a level playing field with these different rules. By clarifying the law so that it continues to be applied the same way through history, which we feel this bill does, we can keep this playing field level. We do not disagree that the Labor Commissioner, especially the current one, has applied the laws as they see fit, and we cannot say that they are wrong. What we do think has happened in the past is that there has been a variance in the way that it is applied without the Legislature actually changing the law. If there is no change in the Legislature's law, then there should be no change in the way the law is applied.

Chairman Parks:

You have had a chance to look at the amendment and support it?

Paul McKenzie:

Yes.

Chairman Parks:

We did have several persons signed in to speak in opposition to A.B. 375.

**Rose McKinney-James, Legislative Representative, Clark County School District,
Clark County, Nevada:**

When I signed in as opposed to the bill—I was presented with the amendments this morning, and I am in the awkward spot of not having a clue as to how the Clark County School District is going to respond to these amendments. We did take exception to the definition that was included in the bill, as written. I would appreciate your indulgence in allowing me to share these amendments with the district. This is just not my area.

**Michael Tanchek, State Labor Commissioner, Nevada Department of Business
and Industry, Carson City, Nevada:**

I am opposed to the bill. Generally, I will take a neutral position on legislation, but every once in a while you have to stand up and defend yourself. Mr. Daly did give me a copy of the amendments. I took a look at them, but I really have not had a chance to digest them. I would like to put them basically in the context of the full legislation before I get into it, to see which way it goes.

The basis of my opposition is primarily that all of these issues have been dealt with in the regulations, NRS 233B, and the regulatory framework. They tell you that these are the types of issues that are best dealt with in regulations because they are fluid, flexible, and they require a lot of interpretation. They are not particularly suitable to statutory interpretation. I recognize that the Legislature has the final say as to what laws are going to be written, and how they are going to be written.

There is a lot of deference given to the administrative agencies and the regulatory bodies as to how your policies are going to be implemented. I believe that the basic purpose of my opposition is that these issues are best dealt with in the regulatory framework, rather than the statutory framework. In Mr. Daly's testimony, he kept referring back to the NAC [*Nevada Administrative Code*]. These issues have been dealt with adequately. If folks want to make changes in the administrative code, I am more than willing to make rules. I am not at all intimidated, nor do I find the process distasteful.

I did provide you with an exhibit (Exhibit I) that you may want to hang on to and may find handy. These are basically the prevailing wage rate tables for Carson City. I just pulled Carson City because they are first up, because they list them alphabetically.

[Michael Tanchek, continued.] We published 2,573 individual rates on these job classifications. Out of those 2,573 rates, 1,207 were based on a best guess, because we had no information for those job classifications in those particular counties. They are kind of a default provision. The question comes up of what is the practice there when you are really faulted into it. Those are the types of issues that come in. We feel that our regulations are the best place to deal with resolving these types of issues.

Richard Houts, Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada, AFL-CIO [American Federation of Labor-Congress of Industrial Organizations]:

I am here to speak in favor of A.B. 375. The Labor Commissioner, Mr. Tanchek, just alluded to the regulatory process and procedures that they use. Over the last couple of years, it is the regulatory process and those procedures that have caused us problems, such as misclassification of workers on these public work projects. The Northern Nevada Building and Construction Trades Council is in support of the bill.

Chairman Parks:

I will now close the hearing on A.B. 375 and open the hearing on A.B. 510. This bill was requested by Sara Jones, Administrator for the State Division of Library and Archives.

Assembly Bill 510: Revises provisions related to publications of state agencies and local governments. (BDR 33-400)

Sara F. Jones, State Librarian, Division Administrator, Department of Cultural Affairs, Nevada State Library and Archives:

This bill is primarily designed to allow for electronic publications to be submitted to the State Publication Center. Currently, statutes in NRS Chapter 378 require that State agencies give us 12 copies of state publications: things that they publish through their State agencies. Local governments provide us with 6 copies. We would like this bill to allow people to tell us the link for the electronic publication, and then we would organize it and keep it in the same way that we do the print publications. That is really it in a nutshell. I have had a number of discussions, primarily with local governments who are concerned that we might have too broad a definition of publications. I think that you will hear a little more about that, but I did want to walk through the bill and give you some of the distinct changes.

[Sara Jones, continued.] First of all, when LCB did this, instead of using the word "state publication distribution center," they want to use "center" throughout the bill. The depository library used to include a certain number of different libraries, and now it means anyone in the library who wants to enter into an agreement with us that will allow public access. Local government is the same definition and means every political subdivision or other entity which has the right to levy or receive money from taxes. The Nevada Housing Authority is included because they do already submit their publications to us, and they are based on taxpayer dollars.

Item number 4 has created some concern that our definition is too broad. The concern is that we would be asking for every single thing printed, or possibly printed, and that is not our intent. We are after publications and things that are of interest to the public, and are distributed to the public. We are talking about budgets, audits, master plans, studies, accountability reports, and things that really are of public interest and need to be catalogued and kept forever, essentially, for their historical value.

We would be amenable, if there is some interest, to either refer or define a publication further by regulation or on our website, or however else the people who have concerns would like that addressed. Basically, the only other changes here are that we allowed for the fact that, as in the state agency realm, you no longer have to use state printing. You can go out to a public or private printer and have your document printed. If you do that, we still would like those copies, and the change in this statute would let that happen.

The biggest part of this bill is the allowance for electronic publications to be submitted to us, catalogued by us, and kept by us. We believe this will make publications, and the distribution of publications, less onerous on both state agencies and on the local jurisdictions, because they can just notify us of the publication rather than having to either print the copies themselves or pay for copies to be printed, and then send them to us.

I did submit written testimony ([Exhibit J](#)), but in the interest of time, it might be best if I just left that for your perusal. The State Library and Archives has actually been the institutional memory of the state for 144 years, and we intend to be that institutional memory for the duration of civilization. We want to make sure we collect things that are important to the people, and we make open government possible by letting people inspect documents that are important, and that their taxpayer dollars are spent on. The major portion of this allows us to deal with this new realm of electronic publications in an organized way. Years ago, what we thought we could do as librarians was to crawl the internet, and we would find all these things. But it can't happen anymore,

because there are 8 billion websites. We really do need both the state and local jurisdictions to help us, to send us these links, and to make sure that they can, in fact, be preserved.

[Sara Jones, continued.] I did also provide a timeline ([Exhibit K](#)) of what's happened with electronic publications just in the last 20 years. We have had this huge explosion, and we are just trying to figure out how to deal with it. I did want to show you just one thing that does illustrate my point. I wanted to show this document, which is actually the 1990 Nevada Statistical Abstract. Currently, the statistical abstract is no longer printed in any print format at all. It is essentially a web bibliography of links to the statistics that are necessary for each year. So this is what we had in 1990, a very useful document in which you can find out the dropout rate of Nevada high school students, and a lot of good information that I suspect many of you would be very interested in. In 1992, we had the same print format—again, very useful for information-gathering. You could look at these tables, you could do it over time, and you could look at benchmarking.

Here is the problem we are really trying to address. This is what I have for 1991. It is pretty hard to get information off of this. I don't have the device to retrieve this information anymore. Now we have a gap. It is the result of not having a proactive way to retain information, didn't then and still don't, and we are struggling with making sure that we preserve electronic information, not only for the present, but for the future.

Ian Campbell, President, Library Association:

The purpose of the bill is to establish a database of electronic state and local government publications, which are deposited to the state publications distribution center for permanent retention and access. By passing [A.B. 510](#), Nevada's electronic information will be preserved and made accessible for future researchers, just as printed publications are preserved for future generations today. I have provided the Committee with some additional information for the record, but I will not read it unless requested. ([Exhibit L](#)).

Assemblyman Goicoechea:

Why do we have twelve copies sent to you? It would seem that if we sent you one copy, then you could go from there.

Sara Jones:

There are a number of reasons for twelve copies. The first one is that, in the "prior to electronic format," you wanted to disburse them geographically so that if one of your constituents in Ely wanted to know about something, there would be a document for them to look at. The other is that it provides, in the event

that there is a natural disaster such as a flood or fire, the copies that have been distributed have also been preserved in a number of other areas.

[Sara Jones, continued.] In the electronic world, the twelve-issue requirement is really not as big a deal, but at this point, we still do distribute all twelve, and actually keep three. We put one out for circulation, which means someone might check it out and never bring it back. We keep one and preserve one, so that it will be there forever. Then we send them to the actual list of locations, which I can provide. Both of the Universities are depositories, along with Washoe County Library, the Clark County Library District, the Legislative Counsel Bureau, the Library of Congress, the Nevada State Historical Society, and the California State Library make up all of the twelve. We keep three, which makes up the total of twelve copies.

Assemblyman Goicoechea:

That explains where the twelve copies go. Clearly there is an issue as to exactly what is meant by “publication,” and that’s always an issue.

Sara Jones:

We do struggle with that issue, but really we are happy to provide guidance. We really are looking for the major things that are of importance to the taxpayer and the public at large. The things I mentioned are about budgets, audits, studies, planning documents, and those kinds of things that we really need to keep. Things for inspection, we keep—when they are current and people care about them at the moment—and when they’re useful for policymaking when we can look back into the past and ask, “What did we do here?” How we look at what we did in the past and what we should do in the future is important.

Anne K. Loring, Legislative Advocate, representing Washoe County School District:

My late mother was a librarian, but she died in 1979. I’m thinking, as I sit here to talk about publications and electronic format on the internet, this is something that would have been totally foreign to her. What a remarkable century we live in now. On behalf of the school district, and as our state librarian alluded to, we do have concerns about the broadness of the new definition on page 2, subsection 4 of the publication, as it relates to school districts. She mentioned to you budgets, audits, reports, and master plans, but also under this definition would be yearbooks, parent newsletters, and notices home to parents about field trips. Clearly, it is not the intent to deluge our state library with all of that material. In talking with her, she suggested defining, on the libraries’ websites, what constitutes “publications” and that would be fine with us. I think it would be an excellent way to not mess up the statutes with things that may continue to change.

[Anne Loring, continued.] At the same time, we need to make clear to our school districts what is and isn't covered, because otherwise, you are going to get swamped with some material which probably is of dubious historical value and takes up a whole lot of room. We would be amenable if the preference is to simply describe it on the website, or if you have some other idea, we would be glad to work with you on that also.

Christine Timko, State Publications Librarian, Nevada State Library and Archives:

I am in favor of A.B. 510, especially since I recognize the importance of electronic documents in our present society and in our future.

Andrew List, Executive Director, Nevada League of Cities and Municipalities:

I heard the woman from the State Library and Archives mention the Rural Housing Authority. They are included on page 2, lines 6 and 7, and I believe that she wants them included because there is a misconception that they receive taxpayer money. As you heard, in the two areas discussed when we had Gary Longaker testify from the Rural Housing Authority, they do not receive any taxpayer dollars; in fact, they are totally self-funded. So, if the policy is to have any agency or local government that receives taxpayer dollars included in this bill, then the Rural Housing Authority should be removed from the bill.

On the other hand, if there is a particular document that is of interest to the State Library and Archives that they want included, they should certainly clarify what that document is and what the intent is in having it included in the bill. They should get some clarification on that matter, but know that the Nevada Housing Authority is not funded by taxpayer dollars whatsoever.

Sara Jones:

When we had the LCB help us draft this, they came to us and asked, "Do you include the Rural Housing Authority?" I guess when you are forming this kind of definition, you need to say, "yes," or "no." We went back and looked in the publication center, and found that they had, in fact, always given us their publications. My understanding is it's a public board, but perhaps I misspoke if there aren't any taxpayer dollars involved. We would be amiable if they should choose not to participate in this, and that could be removed. Their past practice was to go ahead and submit publications to us, so we assumed that we would continue to accept their publications. It isn't a point that makes a huge difference to us—if they would like it to be changed so that they are not included, that would be fine, too.

Andrew List:

Seeing how it is their past practice, I don't think they would have any problem being included in this bill. I will certainly check with Mr. Longaker and make sure he is okay with this and wants to continue the practice of submitting his documents in that manner.

Chairman Parks:

Several sessions ago, I served on an interim committee and we looked at official documents and dealt with the Library and Archives as well as the Secretary of State's Office. We wrestled with the meaning of an "official document," and it is one of those things that probably will always confound us.

John Slaughter, AICP, Management Services Director, Office of the County Manager, Washoe County, Nevada:

Washoe County is neutral on the bill, and as Anne Loring from the school district explained, we would just be seeking some guidance on the definition of publication, particularly when we are publishing documents and publications on almost a daily basis electronically. We would like some guidance on the definition.

Nicole Lamboley, Legislative Relations Manager, Office of the City Manager, City of Reno, Nevada:

We would ask the same, and would like to participate in the discussion on what defines a publication. As it is written, it is very broad, and could include everything from agendas to other stuff that we retain for the right of the citizens to look at. I think it would overburden the state library system with unnecessary documentation.

Nancy Howard, Legislative Advocate, representing Nevada League of Cities and Municipalities:

On behalf of the Nevada League of Cities, I just wanted to say, me too.

Chairman Parks:

I will now close the hearing on A.B. 510 and open the hearing on A.B. 478.

**Assembly Bill 478: Revises provisions relating to publication of legal notices.
(BDR 19-756)**

Darin Kirby, Private Citizen, Las Vegas, Nevada:

I am here today in support of A.B. 478, with respect to including the World Wide Web as quorum for the publication of legal notices. As I understand

it, the point of legal notice is to put the world on notice about issues that may harm or impact the reader. The current statute for the publication of legal notices in ink and on paper obviously reflects a very different era than today. A major outcome from the development of the printing press in the 16th century is literacy. Technological advancements, such as the Internet, is still being imagined and defined as we are discussing today about defining publications. The Internet has become the world standard delivery system for information and the transmission of data. Consumer preference is partly a cause for the decline in circulation at most newspapers, many of which have had profitable circulation growth for generations. The Internet's superior graphical interface, convenience, and usefulness cannot be ignored. It is common for people to search their topics of interest via their web browser or to buy stocks of online search engine companies like Google.

Kent Lauer, Executive Director, Nevada Press Association, Inc., Carson City, Nevada:

Clearly, our association opposes this bill. If this bill becomes a law, few Nevadans would see public notices. Citizens are highly unlikely to go out of their way to go online and search for a public notice amid various websites. The Internet is a pull medium. Users have to be highly motivated to pull the information they want from the Internet. On the other hand, the public expects to find public notices in local newspapers. Newspapers are a push medium. Newspapers thrust things that we need to know in front of our noses. They surprise us. [Submitted [Exhibit M.](#)]

Let me give you two examples of how newspapers surprise citizens when it comes to public notices. The first one involved a proposed zone change in Clark County. The zone change would have affected open space. Residents in that neighborhood who were opposed to the zone change found out about it through a public notice published in the newspaper. The second example involves unclaimed property. The State Treasurer's office reported that the office was overwhelmed by calls after a newspaper published the names of people who were entitled to the unclaimed property. The newspapers published unclaimed property lists and the Treasurer's Office was overwhelmed by calls.

Members of the public won't see notices if they don't have a computer. Large segments of society can't afford a computer, and they can't afford the monthly Internet access fees. Newspapers offer a single, convenient location to find public notices. By contrast, if we were to allow various private websites to publish these, I'm not sure where a person would look to find them. Most Americans, according to research, use the Internet for email; they don't use the Internet for news. Placing public notices on the Internet disenfranchises a number of citizens, especially senior citizens, minorities, and rural residents.

[Kent Lauer, continued.] The other aspect of why this bill is troubling has to do with reliability. The stability of newspapers as a medium for public notices is unquestioned. Take a look at the Internet—highly vulnerable, highly unstable, power surges, computer problems, hackers, viruses, and you name it. Printed legal ads provide a record of public notice that can't be altered. It is right there in print. The Internet also does not provide a reliable archive of public notices. With one push of that computer key, you could delete all kinds of notices, and there would be no archive and no history.

Assemblywoman Pierce:

Once something is on the web, it's never gone. There are people who can find anything that has ever been posted on the web. So I don't think that the delete button works. It doesn't.

Darin Kirby:

I just hope the Committee weighs all the information before them in considering what they will do with regard to this legislation. I just wanted to voice my support that we embrace the technology in a way that protects the integrity that we need to have before the public.

Assemblyman Sibley:

I would like the record to reflect the disclosure that I have a newspaper which publishes legal notices. However, the Legal Division has advised me that this won't affect me any differently than any other newspaper in the state of Nevada.

Chairman Parks:

I will now close the hearing on A.B. 478 and open the work session on A.B. 156.

Assembly Bill 156: Revises provisions governing terms of certain contracts between public bodies and certain design professionals. (BDR 28-858)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

[Read from Work Session document, Exhibit N.] Assembly Bill 156 revises provisions governing terms of certain contracts between public bodies and design professionals. It was sponsored by Assemblyman Conklin with joint sponsors in the Senate that included Senators Hardy, Lee, and Tiffany. It was heard in this Committee on March 10 and again on March 29.

[Susan Scholley, continued.] The bill in its original form specifies that when a design professional adds a public body as named insured as part of a public works contract, the insurance policy would be a general liability policy. The bill in its original form also deleted the option for a public body to require the design professional to defend the public body in lawsuits arising from claims against the public body or the design professional.

There was testimony in opposition to the bill, and proposed amendments were received from the Nevada Public Purchasing Study Commission, the Nevada District Attorneys Association, and the Nevada Public Agency Insurance Pool. Amendments were proposed at the hearing on March 29 and were presented by Russell Rowe on behalf of the American Companies of Engineering Consultants. Subsequent to the hearing, Mr. Rowe worked with the parties in opposition to the bill and submitted some revised amendments, which are shown in the attached mockup in your work session document ([Exhibit N](#)).

There is no identified fiscal impact at the state or local level. Turning to the mockup amendments, the proposal on page 2 of the mockup would be to go to the original language by taking out the reference to a general liability insurance policy, and instead insert the language you see underlined. The caveat would provide such coverage additions agreed to by the insurance carrier of the design professional. Likewise, in subsection 5 the language would revert back to the original language in the current statute, except as otherwise provided in the new subparagraph (a) below. If the insurance company of the design professional elects not to defend the public body, the design professional would be obligated to reimburse for attorneys fees as adjudicated by the court, but only if the design professional was found liable in some way.

Also, the new amendments include a definition you will see on lines 19 through 23, which defines agents of the public body to address a concern that was raised at the hearing.

Assemblyman McCleary:

You mentioned that Mr. Rowe worked with the opposition to draft this amendment. Do I take it the opposition has rested their case?

Susan Scholley:

The revised amendments were submitted on behalf of the American Companies of Engineering Consultants (ACEC-NV) and the Nevada District Attorneys Association. I have not heard from the Public Purchasing Study Commission or Nevada Public Agency Insurance Pool, but perhaps Mr. Rowe could speak about that.

Russell Rowe, Legislative Advocate, representing American Council of Engineering Companies of Nevada:

We have been working with Maddy Shipman on behalf of the District Attorneys Association and Jim Keenan, who represents the Nevada Purchasing Association. Jim said that as long as Maddy is okay with it, then he is okay with it.

Chairman Parks:

The subject came up in regards to the Public Purchasing Association. Did the Nevada Public Purchasing Study Commission agree to this language?

Russell Rowe:

Yes.

Ted Olivas, Chairman, Nevada Public Purchasing Study Commission:

We are in support of this bill as amended.

Assemblyman Hardy:

Does that mean that Wayne Carlson of the Nevada Public Agency Insurance Pool is also on board with the amendments as written?

Russell Rowe:

I have not dealt personally with Mr. Carlson, and the only time I ever saw him was when he showed up at the hearing. I believe he has been working with Maddy Shipman, so my impression is he is also okay.

ASSEMBLYMAN CLABORN MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 156.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:

I will now close the work session on A.B. 156 and open the work session on A.B. 158.

Assembly Bill 158: Requires state agency to provide notice of access to computer of officer, employee or contractor under certain circumstances. (BDR 23-1008)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

Assembly Bill 158 relates to notice of access to computers of officers, employees, or contractors, and is sponsored by Assemblyman Hettrick. It was heard in this Committee on March 10. Assembly Bill 158 requires State officers, employees, and contractors to be notified when the State agency accesses a computer assigned to them. In the alternative, if notice is not given, the State agency must create a record log of such access, including the justification for access without notice. There was no testimony in opposition to the bill.

Assemblyman Hettrick worked with Randy Potts from the Department of Information Technology, also known as DoIT, and Keith Monroe from the Governor's office. He proposed several amendments at the hearing, including authorizing an appointed authority to make determinations on behalf of the head of the state agency. This would provide for routine access for upkeep and upgrades and would broaden the definition of state agency to include the legislative and judicial branches.

Troy Dillard from the Department of Motor Vehicles proposed an amendment to address access in the course of an investigation. This matter was brought up at an earlier work session on March 17, and members of the Committee had several questions regarding the appropriateness of destroying data and whether or not the items in subsection 4 of Section 1 should be conjunctive or disjunctive. In response to these concerns, a mockup of the proposed amendments with additional revisions is attached. There was no fiscal impact at the state or local level.

Turning to the mockup on page 1, those amendments were not an issue with the Committee. Page 2, subsection 4, was the area where the Committee had some concerns. Look at lines 34, 35, and 36, and you will see that it now reads, "The accessing employee must not archive, maintain, store, transfer, transmit, or destroy any identified information..." Then, the provision would stop there.

Turning to page 3, there is a proposal to add a new subsection, which would be subsection 6, starting at line 5. This would require state agencies to adopt regulations setting forth procedures to be followed in responding to reports of inappropriate use. Depending on the nature of the report, or the nature of the matter under consideration, it would proceed to some disciplinary action, criminal action, or whichever would be appropriate. The details of what happens next would be set out in regulations rather than in the statute.

Turning back to page 2, the question was whether or not, starting at line 29 through 40, those should be in the conjunctive, using the word "and," or

whether they would be in the disjunctive. I think it's clear that it would be "and" in the conjunctive, and that all of these would apply.

[Susan Scholley, continued.] I spoke with Mr. [Randy] Potts before the hearing and have received an email from Assemblyman Hettrick. They are in agreement with the proposed revisions to their earlier amendments.

Randy Potts, Chief Information Security Officer, Department of Information Technology (DoIT):

The one thing I did notice while reading this one last time was on line 33, on page 2, in Section 2. As it is worded right now, I do believe that the accessing employee must not archive, maintain, store, transmit, or destroy any of the identified information. That could be more counter-productive than the proposal in Section 6 that allowed the agency to adopt regulations setting forward how they would proceed. Right now, it says the accessing employee can't do anything, even if the agency adopted regulations. The only small amendment I would offer would be at the end of line 34 of Section 2, page 2, which is "other than identified by regulations" established in subsection 6—or something to that effect. I just happened to notice that they were in conflict with one another.

Assemblywoman Parnell:

I keep reading this, and it sounds, on one hand, like it's to protect anybody working in one of our state agencies. Then it looks almost like an invasion of privacy, and I need that clarified. Can you give me that information? I read it, and I am not comfortable with the language. Say I am Susie Smith, and I am a secretary at DMV. How does this affect me?

Randy Potts:

Basically, what we set forth in this provision is that there has to be suspicion that Susie was doing something wrong, and that would cause a direct action to occur, without notification, to ensure that what was going on is verified. Why it's not an invasion of privacy goes back to our understanding and belief that the property and the equipment that is being used to conduct the business of the State is indeed State property. Because of that nature, there shouldn't be the full expectation of privacy. However, we do believe that the regulations, as presented by Mr. Hettrick that set forth provisions for us to follow in the event that there is a suspicion, should be specifically addressed. We are willing to go through those additional steps to assure that we are not on a fishing expedition. The biggest challenge we saw is what happens when an employee, who is doing his job, uncovers that Susie was doing something inappropriate. We wanted to make sure we protected both the employee, who was there at the desk and noticed the inappropriate use, as well as the agency, from harm in case there was criminal activity.

Assemblywoman Parnell:

My follow-up would be on the use of the word "suspicion." Have you defined that? Give me an example of suspicion, because all of this seems like something that could be abused within a workplace. If you have something like this happen, then you can go into somebody's computer, because that qualifies as a legitimate concern or suspicion. If you could help me with that, I would appreciate it.

Randy Potts:

There is no mechanism in place keeping somebody from going out and just randomly searching people's computers. There wouldn't be a need to be suspicious of someone. Is there a specific definition of suspicion? I am not aware of one. However, there has to be a documented trail that is required by that appointed authority to go and report what they believe may be going on. I would now have to document what my belief is, and why I believe that. At least there is a place to go back to and say what the rationale behind it was, without laying out every type of provision.

Assemblywoman Parnell:

Currently, if somebody in an office had a suspicion about something going on, he or she could go into that computer and would not even have to let that individual know that someone had accessed the information on the computer? If we pass this, would they at least be notified that it indeed took place?

Randy Potts:

That is correct. Either they would be notified, or there at least would be a log filed by the appointed authority indicating that there was suspicion. You are correct that the current statute has nothing that limits a supervisor from making a unilateral decision to go into somebody's computer.

Eileen O'Grady, Committee Counsel, Legislative Counsel Bureau:

In looking at the language, perhaps we could delete subparagraph 2 and just cover that by regulations, and let the agency decide how they want to deal with the information that is discovered.

Susan Scholley:

The language in subsection 6 would specifically refer to the regulations, including provisions relating to the transfer, transmission, and destruction of information, so it would be clear that the issue would be handled in the regulations.

Randy Potts:

We completely support that.

Assemblywoman Pierce:

I just wanted to check. What we just discussed is taking out Section 4(a), lines 33 through 36.

Susan Scholley:

Yes. We would delete lines 33 through 36 and then the other amendments, as shown in the mockup.

ASSEMBLYMAN CHRISTENSEN MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 158.

ASSEMBLYMAN GRADY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:

I will now close the work session on A.B. 158 and open the work session on A.B. 197.

Assembly Bill 197: Revises Charter of City of North Las Vegas concerning election of City Councilmen. (BDR S-278)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

Assembly Bill 197 revises the charter of the City of North Las Vegas. Assembly Bill 197 was sponsored by Assemblyman Atkinson and a few other assemblypersons and was heard in this Committee on March 24.

Assembly Bill 197 would amend the city charter of North Las Vegas to provide for the election of ward representatives by ward residents. This opposes the current practice of having ward elections on an at-large basis. Speaking in support of the bill were the Nevada Chapter of the American Civil Liberties Union, Andres Ramirez and Jim Avance, speaking as North Las Vegas residents, and former Assemblywoman Vonne Chowning.

Speaking in opposition to the bill were city representatives from North Las Vegas who preferred that the voters of the city decide changes in the election format, and they urged further consideration of the matter. In relation to amendments to the bill, Assemblyman Atkinson suggested that it was his intent that the bill not be effective until the 2007 election and suggested an amendment to that effect.

[Susan Scholley, continued.] Assemblywoman Giunchigliani had also proposed an amendment to the bill, or in the alternative, a letter of intent to accompany the bill that would have called for a transition committee to be formed to assist in the changing of ward boundaries. Ms. Giunchigliani has withdrawn that request for an amendment. I also provided some background out of my notes on the testimony. Local government may have some fiscal impact, but there was no fiscal impact identified at the state government level. The fiscal notes were basically zero when reviewed.

Assemblyman Atkinson:

Under testimony, it says Jim Avance spoke in favor. He did not speak in favor and was in strong opposition.

Chairman Parks:

We will correct our records to show he did speak in opposition to the bill.

Assemblyman McCleary:

I want it noted to the Committee that the entire North Las Vegas delegation is in support of this bill. We wouldn't be bringing it to this body if we didn't feel there was a problem. Someone asked us, "Why not Henderson or Boulder City?" I told them I do not represent them, and I do not see a problem there, but there is a problem in North Las Vegas. Someone also brought up that the population should be allowed to vote on it. But the problem is that we have 70 percent of the voters coming from one neighborhood. Why would they change the status quo? I surely wouldn't. This should be about fairness. Each district should have equal representation based on their population and not on voter turnout.

Chairman Parks:

It is a charter change, and each city seat does have its own charter. Some years ago, I tried to advocate for a model charter for statutory enactment, and it obviously never got anywhere. This is a North Las Vegas-specific bill, and I think that the way we have set up the charters in all the cities has been custom designed for each of those entities.

Assemblyman Grady:

Although I respect my colleagues, and know they are trying to do what they feel is right for their city, my personal philosophy is that it should go to a vote of the people in North Las Vegas. Reluctantly, I cannot support the bill.

Chairman Parks:

I will just add one closing comment. This goes back to when the City of Las Vegas had only 4 wards, and there was pressure to increase the city,

because of its size, to 6 wards. We found almost insurmountable opposition from the City of Las Vegas to expand its representation. I think that the increased representation in the City of Las Vegas has made it a better entity. This legislation, although it does not increase representation, will more adequately reflect the representation of the residents in North Las Vegas.

Assemblyman Munford:

I am a little torn between which way to go. I can see the intent and merit in letting the people have the voice. That's the democratic way. They originally implemented the bill, and they should have the right to take it away. I am neutral.

Assemblyman Atkinson:

I spoke with Mr. Munford awhile ago, and I was under the impression that he was in favor. This is the first I have heard that he has more concerns. I would like to go through with the vote, and if he wants to abstain, then that is his issue.

ASSEMBLYMAN ATKINSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 197.

ASSEMBLYMAN McCLEARY SECONDED THE MOTION.

THE MOTION CARRIED WITH ASSEMBLYMAN GRADY AND
ASSEMBLYMAN HARDY VOTING NO. ASSEMBLYMAN MUNFORD
AND ASSEMBLYMAN CLABORN ABSTAINED FROM THE VOTE.

Chairman Parks:

I will now close the work session on A.B. 197 and open the work session on A.B. 351.

**Assembly Bill 351: Revises certain provisions relating to juvenile justice.
(BDR 5 833)**

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

Assembly Bill 351 requires the adoption of certain regulations concerning the display and sale of art in state, county, and municipal parks. It was sponsored by Assemblyman Mortenson and heard in this Committee on April 1. The bill requires the State Parks Administrator, counties, and cities, to adopt reasonable regulations for the display and sale of art within recreational, cultural, and park

facilities in their jurisdiction. This measure was concurrently referred to the Assembly Committee on Natural Resources, Agriculture, and Mining.

[Susan Scholley, continued.] Testimony was received from the City of Reno, which stated that it was currently working on such an ordinance, and was therefore neutral. Speaking in opposition was the Nevada League of Cities, who offered, instead, to advise their member cities about the applicable constitutional case law. No amendments were proposed, and there is no state or local impact.

Chairman Parks:

We put this bill on the work session for two reasons. It was jointly referred to both Government Affairs and Natural Resources, and it would need to be passed out of both Committees prior to next week's deadline. If we have a problem with the bill, do we want to forward it on to Natural Resources for the problem to be worked out? We did receive testimony relative to the case law.

Assemblyman Grady:

I think there were some questions, maybe from the City of Reno, in regards to some fees that were in the bill.

Chairman Parks:

The normal process is not to reopen the bill for testimony, but given the fact that this is one of those bills that did not receive full support from our local governments, if there is a specific question I will open up the floor. I believe Mr. Grady's question was a request for a response from the local governments.

**Nicole Lambole, Legislative Relations Manager, Office of the City Manager,
City of Reno, Nevada:**

We did have a neutral position, because our counsel had not looked at the bill. They did take a position of opposition, but indicated they wanted us to work with the bill's sponsor. We do have concerns about the restriction in the bill that says we would not be able to charge fees, because under certain city ordinances, we require people to have business licenses to sell their items. We are working on a similar ordinance that deals with First Amendment rights of artists and artisans. It is not exactly what the bill sponsor intended, but we indicated our willingness to work with it. We do have some concerns related to our ability to charge fees to make sure that these people are licensed properly, and that the liability issues are addressed.

Assemblyman Claborn:

I know that if you make anything in your home, and you take it outside of your home to sell it, you have to have a license. I have a license for that, so I know that is the rule, and that is Nevada law.

Nicole Lambolely:

There is also state law governing filing of income taxes, and what licenses you need to have a state business license.

Assemblyman Claborn:

It is the same law that covers garage sales and swap meets.

Dan Musgrove, Director of Intergovernmental Relations, Office of the County Manager, Clark County, Nevada:

I was yielding to your request not to open testimony, but we did allow David Frazier to come up and express the interests of essentially all local governments. We really feel this is a local issue, and the bill, as written, is quite problematic in terms of some of the definitions of artist, the fees, and those kinds of things. The term "con artist" comes to mind as to who might want to think they could sell art in our public facilities. That is scary, and we, as local governments, will take it upon ourselves to make sure that we are in full compliance with what comes down from the federal court in making sure that those people have an avenue to sell their art. Please give us the authority at the local level, and do not put it in statute.

Assemblyman McCleary:

I realize this bill still has some concerns and probably needs some work on some definitions, but I really like the bill. Is it possible to send this to Natural Resources with no recommendation, allowing the author to have more time to try to get the language together?

Chairman Parks:

I think we can.

Susan Scholley:

It is possible for the Committee to send this out without a recommendation, in which case it would go to NATRAM [Natural Resources, Agriculture and Mining Committee] and then have further hearings there. By doing it today, you would allow them sufficient time to put it on their agenda and hold those hearings.

Assemblyman McCleary:

I would like them to do that, if it is possible and is the Chairman's desire.

Assemblywoman Kirkpatrick:

I am all for moving things forward, but I thought at the hearing the sponsor, Mr. Mortenson, said that they were going to look at the fee schedule, as well as make an amendment to accommodate "Art in the Park." I do serve on the NATRAM Committee, so I would still want these amendments, and I thought we already had them. I am confused about why we have no amendments.

Assemblywoman Pierce:

I am not inclined to vote for this. I think that both of the urban counties have real active and growing art scenes. We have First Friday which started out with a couple of hundred people and is now thousands of people. It also seems like there is a lot happening in Reno also. Right now the art scene is growing in both of those counties.

Assemblyman Claborn:

I am not against the bill either, but the problem I have is where the law is now regarding vendors. You have to have a license. Anything you sell you have to pay taxes on. I get a tax bill every month. You are going to have to change the law for being a vendor.

Chairman Parks:

Acting on the possible amendment that Mr. McCleary suggested—would at least keep life in the bill and give it the opportunity to possibly be resolved in Natural Resources.

Assemblyman Christensen:

What is the purpose of sending the bill to Natural Resources?

Chairman Parks:

The fact is, for the bill to be alive after next Friday, it must be passed out of both, the Government Affairs and the Natural Resources Committees. This, in effect, continues to breathe life into the bill, because there is time to have a hearing on it, as well as iron out some of the difficulties.

Susan Scholley:

In response to Mr. Christensen's question, the bill was concurrently referred, first to Government Affairs, and then to the Natural Resources, Agriculture, and Mining Committee. It must pass out of both policy committees before the April 15 deadline. If there are amendments in the first policy committee, those would be requested, and then it would be referred after the amendments came back, and it went through to the floor. Mr. McCleary's proposal would buy some extra time for working things out at the NATRAM level. In terms of why it

was concurrently referred, my understanding is that it was the State Park's jurisdiction in the bill that was within NATRAM's jurisdiction.

Assemblyman Christensen:

That answers my question. I am more of the mind of leaving this with the counties and cities, but if there is appetite to send it to Natural Resources, I will support that.

Assemblyman Claborn:

If the Committee wants to send it to Natural Resources for a hearing, then that would be up to you.

Assemblyman Hardy:

From Ms. Scholley's explanation, I have another question. Do we have to attach an amendment that we want in this Committee to the bill, even though we send it without recommendation?

Susan Scholley:

If this Committee were to amend and do pass, then the bill would go through the usual process of being sent to Legal for drafting an amendment, and it would come back to the Floor for a second reading, and then get passed on to NATRAM as the concurrent referral. That would take several days, at best.

If this Committee wants to just pass it out, as Mr. McCleary suggested, without recommendation, then it goes to NATRAM without any recommendation from this Committee. I think by virtue of some members serving on this Committee and serving on NATRAM, I presume that some of the issues that were raised in Government Affairs would be brought to the attention of the Natural Resources, Agriculture, and Mining Committee.

Assemblyman Mortenson:

I wanted to clarify that I had asked Legal for language on an amendment. The amendment is the one that concerned counties and cities most. They would be able to continue the many functions they have where they bring the artists in, provide them with certain services and advertisements, and the artists pay a fee. I think that is a great thing, and I would not want to hinder that one iota. I asked Legal for language on that, which I would have presented to this Committee, but I did not get it in time. I guarantee I will get it before Natural Resources, and I will submit that amendment.

ASSEMBLYMAN McCLEARY MOVED TO REFER
ASSEMBLY BILL 351 TO THE COMMITTEE ON NATURAL

RESOURCES, AGRICULTURE, AND MINING WITHOUT
RECOMMENDATION.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:

I will now close the work session on A.B. 351 and open the work session on A.B. 372.

Assembly Bill 372: Revises provisions relating to powers and duties of Rural Housing Authority. (BDR 25-598)

Susan Scholley, Committee Policy Analyst, Legislative Counsel Bureau:

Assembly Bill 372 relates to the powers and duties of the Rural Housing Authority. It was sponsored by the Assembly Committee on Government Affairs on behalf of the Nevada Association of Counties. This bill was heard in this Committee on April 1.

The bill amends the authority of the Rural Housing Authority to enable it to provide affordable housing services to persons in rural areas within Clark and Washoe Counties. The bill clarifies that the Rural Housing Authority may not operate in an area in Clark or Washoe County that is already served by a housing authority. The bill goes on to give authority to, and clarify the authority of, the Rural Housing Authority to give mortgages to lower and moderate income persons, to borrow money, issue bonds, and make loans or grants to persons or entities in furtherance of the Rural Housing Authorities purposes.

Speaking in support of the bill was the Nevada League of Cities and Municipalities. No amendments were proposed. I did include a copy of the summary testimony of Gary Longaker, Executive Director of the Rural Housing Authority. There was no fiscal impact at the state or local level identified.

ASSEMBLYMAN GOICOECHEA MOVED TO DO PASS
ASSEMBLY BILL 372.

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:

I will now close the work session on A.B. 372 and open the work session on A.B. 402.]

**Assembly Bill 402: Makes various changes relating to municipal obligations.
(BDR 30-594)**

Susan Scholley Committee Policy Analyst, Legislative Counsel Bureau:

Assembly Bill 402 was sponsored by the Committee on Government Affairs on behalf of the Nevada Association of Counties and was heard in this Committee on April 1. It permits municipalities to use utility franchise fees as pledged revenues for the purposes of general or special obligations of the municipality.

Testimony in support of the bill was given by the Association of Counties, who indicated that it had requested the bill on behalf of Douglas County. Speaking in support was Al Kramer, the Carson City Treasurer, and Mary Walker, on behalf of Carson City, Douglas, and Lyon Counties. There was some discussion that there are bills in the Senate that propose to abolish franchise fees, and the proponents of the bill indicated they were aware of those and were working on that issue.

No amendments were proposed and no fiscal impact has been identified at the state or local level.

ASSEMBLYWOMAN PARNELL MOVED TO DO PASS
ASSEMBLY BILL 402.

ASSEMBLYWOMAN PIERCE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Parks:

I will now close the work session on A.B. 402 and open the work session on A.B. 345.

Assembly Bill 345: Expands membership of Peace Officers' Standards and Training Commission. (BDR 23-1326)

Chairman Parks:

I am being told that A.B. 345 is a slam dunk. It changes the composition of the Peace Officers' Standards and Training Commission from seven to nine members.

ASSEMBLYMAN GOICOECHEA MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 345.

ASSEMBLYMAN GRADY SECONDED THE MOTION.

MOTION CARRIED UNANIMOUSLY.

Chairman Parks:

We may need to have a hearing on Saturday, April 9. The alternative is meeting earlier in the morning. This meeting is adjourned [at 11:41 a.m.].

RESPECTFULLY SUBMITTED:

Paul Partida
Transcribing Attaché

APPROVED BY:

Assemblyman David Parks, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 5, 2005

Time of Meeting: 8:11 a.m.

Bill	Exhibit	Witness / Agency	Description
	A	*****	Agenda
<u>A.B. 345</u>	B	Assemblyman Perkins	Amendments from Frank Adams, 4 pages
<u>A.B. 345</u>	C	Assemblyman Perkins	PowerPoint CD from Frank Adams
<u>A.B. 251</u>	D	E. Louis Overstreet / Urban Chamber of Commerce	Written testimony, 2 pages
<u>A.B. 251</u>	E	Ted Olivas / representing the Nevada Public Purchasing Study Commission and the Public Purchasing Professionals Association	Summary and recommendations, 2 pages
<u>A.B. 251</u>	F	Dan Musgrove / Office of the County manager, Clark County	Initiatives Already Underway In Terms of Small Business Development at Clark County, 4 pages
<u>A.B. 251</u>	G	Christina Dugan / Las Vegas Chamber of Commerce	Letter of Concern, 1 page
<u>A.B. 375</u>	H	Richard Daly / Laborers International Union of North America Local No. 169	Amendments, 4 pages
<u>A.B. 375</u>	I	Michael Tanchek / State Labor Commission, Nevada Department of Business and Industry	2005 Prevailing Wage Rates, Carson City, 28 pages
<u>A.B. 510</u>	J	Sara F. Jones / Department of Cultural Affairs, Nevada State Library and Archives	Written Testimony. 3 pages
<u>A.B. 510</u>	K	Sara F. Jones / Department of Cultural Affairs, Nevada State Library and Archives	State Publications Timeline and Program Statement, 1 page
<u>A.B. 510</u>	L	Ian Campbell / Washoe County Library System	Additional information for the Committee

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<u>A.B.</u> 510	M	Kent Lauer / Nevada Press Association, Inc.	Testimony and letters
	N	Susan Scholley / Legislative Counsel Bureau	Work Session Documents, 14 pages